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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/374,598	08/13/1999	JAN HENDRIK MENSEN	044696-5007	3958

9629 7590 03/25/2002

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EXAMINER

STEPHAN, BETH AUBREY

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 03/25/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	MENSEN, JAN HENDRIK	
09/374,598	Examiner	Art Unit

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 30 August 2001.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-45 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 1-16 is/are allowed.

6) Claim(s) 17-45 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6) Other: \_\_\_\_\_

Receipt is acknowledged of the amendment filed 2/28/02. The addition of claims 42-45 does not comply with Rule 1.173 and must be corrected. The amendment of 6/19/00 regarding claims 124 and 41 does not comply with Rule 1.173 and must be corrected.

***Recapture Rejection***

Claims 17-45 are rejected under the Recapture rule with respect to patented file application 08/262,505, now US patent 5,657,600. Because of the Reasons for Allowance in the patented file, the patented file has surrendered any claims drawn to a building component not containing either of the following, 1.) "a bridging member" as claimed in the patented file, this includes all the limitations to the bridging member, or 2.) "one of the panels having a top substantially thicker than the bottom, the outer surface extending upwardly and outwardly from the bottom, and the inner surface of the thicker part is partially cut away". Claims 17-45 of the Reissue application must contain either "a bridging member" as claimed in the patented file, or "one of the panels having a top substantially thicker than the bottom, the outer surface extending upwardly and outwardly from the bottom, and the inner surface of the thicker part is partially cut away" in order to overcome the Recapture rejection. None of claims 17-45 contain these features.

***Response to Arguments***

Applicant's arguments filed 2/28/02 have been fully considered but they are not persuasive.

Applicant's argument regarding the Recapture Rule have been considered but disagreed with by the examiner. As pointed out at the interview on 2/26/02, the PTO policy for handling Recapture in Reissue applications is very clear. If a Reasons for Allowance is done in a patented file and applicant does not present a counter statement or comment as to the reasons for allowance and permitted the claims to issue, any limitations recited in the Reasons for Allowance are considered the reason that the patent claims were allowable over the art of record, and thus applicant is considered to have surrendered subject matter not containing said limitations. Therefore, since the Reasons for Allowance from the patented application stated that the patented claims must have one of two features as specified in the above rejection, and the applicant had no counter statement or comment directed to the specifics of the two features required for patentability these Reissue claims are rejected under the Recapture Rule. Since this is office policy the rejection is maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth A Stephan whose telephone number is (703) 308-2485. The examiner can normally be reached on M-Th, 7:30 - 6:00 pm.

The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.



Beth A Stephan  
Primary Examiner  
Art Unit 3635

BAS  
March 23, 2002